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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,765	01/30/2001	Michael J. Docy		5565
7590	05/24/2004			
James A. Hudak, Esq. Suite # 304 29425 Chagrin Boulevard Cleveland, OH 44122-4602			EXAMINER CYGAN, MICHAEL T	
			ART UNIT 2855	PAPER NUMBER

DATE MAILED: 05/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/774,765	DOCY ET AL.
	Examiner Michael Cygan	Art Unit 2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 April 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,4-6 and 9-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,4-6 and 9-11 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 July 2002 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 16 April 2004 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Filippi (US 5,883,301) in view of Kammeraad (US 5,507,176), further in view of Dodge (US 4,575,807). Filippi discloses a method for testing a fuel tank comprising pressurization of a fuel tank with an external pressure source to a predetermined stable pressure, actuating a timer at the stable pressure, allowing the pressure to decay until a second, predetermined time is reached, and comparing the measured pressure difference to a predetermined leakage

pressure difference to determine if the tank has an acceptable leakage rate; see column 11, line 65 through column 13, line 41; and Figures 1, 2a, and 2b.

The measurements include passage of gas through a reference orifice (column 12, lines 21-22), and are repeated (column 13, lines 37-38). Filippi teaches the claimed invention except for the enclosure of tester components in a housing and comparison of an acceptable pressure change over a predetermined time period (column 13, lines 25-27), rather than the applicant's measurement of an acceptable time change over a predetermined pressure period.

Kammeraad discloses a method for testing a fuel tank comprising pressurization of a fuel tank with an external pressure source to a predetermined stable pressure, actuating a timer at the stable pressure, allowing the pressure to decay until a second, predetermined time is reached, and comparing the measured pressure difference to a predetermined leakage pressure difference to determine if the tank has an acceptable leakage rate, wherein the tester is enclosed by a housing [90]; see column 5 lines 60-61 and column 7, lines 11-44. It would have been obvious to use a housing as taught by Kammeraad in the invention taught by Filippi to enclose the tester components, since housings are well known to provide environmental protection and protect the enclosed components.

Dodge teaches that for a fluid leak testing method, a leak determination can be made either as an allowable pressure drop within a set

time or an allowable time period for a preset pressure drop; see column 1, lines 41-52. It would have been obvious to one having ordinary skill in the art at the time the invention was made to measurement of a pressure change over a predetermined time period as taught by Dodge in the invention of Filippi to determine if the tank has an acceptable leakage rate, since Dodge teaches that the two techniques can be used interchangeably.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1, 4-6, and 9-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,298,712 B1 in view of Filippi (US 5,883,301) in view of Kammeraad (US 5,507,176). The '712 patent teaches the claimed invention, including comparison of measured time ratios to a predetermined standard ratio, except for application to a fuel tank, pressure stabilization, (for claim 9)

comparison of times using three predetermined pressures, and (for claims 1 and 4-6) the means to perform such testing.

Filippi discloses a method for testing a fuel tank comprising pressurization of a fuel tank with an external pressure source to a predetermined stable pressure, actuating a timer at the stable pressure, allowing the pressure to decay until a second, predetermined time is reached, and comparing the measured pressure difference to a predetermined leakage pressure difference to determine if the tank has an acceptable leakage rate; see column 11, line 65 through column 13, line 41; and Figures 1, 2a, and 2b.

The measurements include passage of gas through a reference orifice (column 12, lines 21-22), and are repeated (column 13, lines 37-38). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a predetermined stable pressure (and for claim 9, comparison of times at three predetermined pressures) as taught by Fillipi in the invention claimed in claim 1 of the '712 patent to determine leakage, since Fillipi teaches the advantage of reducing false alarms even for extreme environmental conditions (column 6 lines 8-41).

Kammeraad discloses a method for testing a fuel tank comprising pressurization of a fuel tank with an external pressure source to a predetermined stable pressure, actuating a timer at the stable pressure, allowing the pressure to decay until a second, predetermined time is reached, and comparing the measured pressure difference to a predetermined leakage

pressure difference to determine if the tank has an acceptable leakage rate, wherein the tester is enclosed by a housing [90]; see column 5 lines 60-61 and column 7, lines 11-44. It would have been obvious to use a housing and fuel tank system as taught by Kammeraad in the invention claimed in claim 1 of the '712 patent to enclose the tester components and to form the tested system, since housings are well known to provide environmental protection and protect the enclosed components, and fuel tanks are well known to leak and require testing as disclosed by Kammeraad.

Response to Arguments

4. Applicant's arguments with respect to claims 1, 4-6, and 10-11 have been considered but are moot in view of the new ground(s) of rejection.

5. In response to applicant's argument that Dodge is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, each reference is in the container leak testing art.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure, and disclose ratiometric comparison of leak testing results to calibration data.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Cygan whose telephone number is (571) 272-2175. The examiner can normally be reached on 8:30-6 M-Th, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on 571-272-2180. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Cygan
Primary Examiner
Art Unit 2855